

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARC DOUGLAS LEVERETTE,

Defendant-Appellant.

UNPUBLISHED
November 26, 2019

No. 345381
Genesee Circuit Court
LC No. 11-029666-FC

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317, and was sentenced to serve 71 to 240 months imprisonment. Defendant now appeals¹ and argues that the trial court erred by failing to impose a sentence within the agreed-upon range and by accepting the plea with an insufficient factual basis to support the crime of second-degree murder. Additionally, defendant argues that defense counsel provided ineffective assistance. We affirm.

I. FACTS

Defendant was with a group of teenagers at an abandoned house in Detroit when he drew a gun and it discharged, killing his friend. Defendant was charged with open murder, carrying a concealed weapon, and possession of a firearm during the commission of a felony (felony-firearm). The prosecutor amended the open murder charge to second-degree murder. Defendant agreed to plead guilty to second-degree murder and the prosecutor dismissed the remaining charges.

The parties entered into a sentence agreement, under which the guidelines range would be determined under the sentencing grid applicable to Class C offenses. During the plea hearing,

¹ This Court granted defendant’s delayed application for leave to appeal. *People v Leverette*, unpublished order of the Court of Appeals, entered October 10, 2018 (Docket No. 345381).

defendant admitted that he caused the victim's death with a handgun; however, he denied that he intended to kill the victim. Defendant also admitted that he intended to do great bodily harm to the victim and understood that by pointing the gun at the victim and firing it in the victim's direction, defendant would increase the likelihood that he would kill the victim.

At sentencing, defense counsel requested that the trial court impose a sentence at the low end of the guidelines range. Defense counsel informed the trial court that the sentence agreement provided that the guidelines minimum sentence range was 36 months to 71 months imprisonment. The trial court, however, found the correct range to be 71-240 months, and imposed a minimum sentence of 71 months.

II. LAW & ANALYSIS

Defendant first argues that the trial court erred by failing to impose the sentence as agreed upon by the parties and by accepting the plea with an insufficient factual basis to support the crime of second-degree murder. We disagree.

Defendant concedes in his brief on appeal that he has already fully served his minimum 71-month sentence. Where the defendant has already served his minimum sentence, it is impossible for this Court to fashion a remedy with respect to a challenge to that sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Thus, this issue is moot and, as a general rule, we do not decide moot issues. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004); *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Defendant next argues that defense counsel provided ineffective assistance. However, this unpreserved claim² is abandoned because defendant failed to brief this issue. He merely cites authority setting forth the basis of an ineffective assistance of counsel claim involving an involuntary plea agreement, and he provides no factual support as to how defense counsel's actions constituted ineffective assistance. "The failure to brief the merits of an allegation of error constitutes an abandonment of the issue." *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004). "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Therefore, this claim is abandoned on appeal.

² Defendant did not move for a new trial or an evidentiary hearing in the trial court; therefore, this issue is unpreserved. *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009) (to preserve a claim of ineffective assistance of counsel, a defendant must move for a new trial or an evidentiary hearing in the trial court).

III. CONCLUSION

Affirmed.

/s/ Jonathan Tukul
/s/ David H. Sawyer
/s/ Michael J. Riordan